

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION


NO. 5:10-HC-2149-BO

JAMIE ANTWON MITCHELL,)
 Petitioner,)
)
 v.)
)
GEORGE KENWORTHY,)
 Respondent.)

ORDER

Jamie Antwon Mitchell, a state prisoner, petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. George Kenworthy (“Respondent”) moved to dismiss the complaint as untimely and filed outside the statute of limitation. 28 U.S.C. § 2244(d)(1). This issue of timeliness (without the application of equitable tolling which is also argued) shall be determined by the applicability of whether petitioner is entitled to the 90-day period for seeking certiorari with the Supreme Court, even when the prisoner failed to seek discretionary review in his state’s highest court. See Sup. Ct. R. 13.1 Federal courts are divided on this issue, and the United States Supreme Court has granted certiorari with oral argument set for November 2, 2011. Specifically, the Supreme Court shall address the issue: “Was the application for a writ of habeas corpus out of time under 28 U.S.C. § 2244(d)(1) due to the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review?” Gonzalez v. Thaler, 10-895 (petition for certiorari granted June 13, 2011). Therefore, the matter is stayed pending the decision of the Supreme Court in Gonzalez. The parties shall notify this court of the Supreme Court’s decision within 10 days of that opinion.

SO ORDERED, this 7 day of September 2011.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE